

SENATE BILL NO. 237

INTRODUCED BY BOYLAN, MCCALLUM, KOLSTAD

IN THE SENATE

JANUARY 28, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

FEBRUARY 17, 1987 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

FEBRUARY 18, 1987 PRINTING REPORT.

FEBRUARY 19, 1987 SECOND READING, DO PASS.

FEBRUARY 20, 1987 ENGROSSING REPORT.

FEBRUARY 21, 1987 THIRD READING, PASSED.
AYES, 47; NOES, 2.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

MARCH 11, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 14, 1987 SECOND READING, CONCURRED IN.

MARCH 16, 1987 THIRD READING, CONCURRED IN.
AYES, 76; NOES, 18.

RETURNED TO SENATE.

IN THE SENATE

MARCH 17, 1987 RECEIVED FROM HOUSE.
SENT TO ENROLLING.

1 Secretary of Transportation has power to establish
2 qualifications and maximum hours of service pursuant to the
3 provisions of 49 U.S.C. 304;

4 (b) an employee of an employer subject to the
5 provisions of part I of the Interstate Commerce Act;

6 (c) an individual employed as an outside buyer of
7 poultry, eggs, cream, or milk, in their raw or natural
8 state;

9 (d) a salesman, partsman, or mechanic paid on a
10 commission or contract basis and primarily engaged in
11 selling or servicing automobiles, trucks, mobile homes,
12 recreational vehicles, or farm implements if he is employed
13 by a nonmanufacturing establishment primarily engaged in the
14 business of selling such vehicles or implements to ultimate
15 purchasers;

16 (e) a salesman primarily engaged in selling trailers,
17 boats, or aircraft if he is employed by a nonmanufacturing
18 establishment primarily engaged in the business of selling
19 trailers, boats, or aircraft to ultimate purchasers;

20 (f) a salesman paid on a commission or contract basis
21 who is primarily engaged in selling advertising for a radio
22 or television station employer;

23 (f)(g) an employee employed as a driver or driver's
24 helper making local deliveries who is compensated for such
25 employment on the basis of trip rates, or other delivery

1 payment plan, if the commissioner finds that such plan has
2 the general purpose and effect of reducing hours worked by
3 such employees to or below the maximum workweek applicable
4 to them under 39-3-405;

5 (g)(h) an employee employed in agriculture or in
6 connection with the operation or maintenance of ditches,
7 canals, reservoirs, or waterways not owned or operated for
8 profit and not operated on a sharecrop basis and which are
9 used exclusively for supply and storing of water for
10 agricultural purposes;

11 (h)(i) an employee with respect to his employment in
12 agriculture by a farmer, notwithstanding other employment of
13 such employee in connection with livestock auction
14 operations in which such farmer is engaged as an adjunct to
15 the raising of livestock, either on his own account or in
16 conjunction with other farmers, if such employee is:

17 (i) primarily employed during his workweek in
18 agriculture by such farmer; and

19 (ii) paid for his employment in connection with such
20 livestock auction operations at a wage rate not less than
21 that prescribed by 39-3-404;

22 (i)(j) an employee of an establishment commonly
23 recognized as a country elevator, including an establishment
24 which sells products and services used in the operation of a
25 farm, if no more than five employees are employed by the

1 establishment;

2 (j)(k) a driver employed by an employer engaged in the
3 business of operating taxicabs;

4 (l) an employee who is employed with his spouse by
5 a nonprofit educational institution to serve as the parents
6 of children who are orphans or one of whose natural parents
7 is deceased or who are enrolled in such institution and
8 reside in residential facilities of the institution so long
9 as the children are in residence at the institution and so
10 long as such employee and his spouse reside in such
11 facilities and receive, without cost, board and lodging from
12 the institution and are together compensated, on a cash
13 basis, at an annual rate of not less than \$10,000;

14 (m) an employee employed in planting or tending
15 trees; cruising, surveying, or felling timber; or
16 transporting logs or other forestry products to a mill,
17 processing plant, railroad, or other transportation terminal
18 if the number of employees employed by his employer in such
19 forestry or lumbering operations does not exceed eight;

20 (n) an employee of a sheriff's department who is
21 working under an established work period in lieu of a
22 workweek pursuant to 7-4-2509(1);

23 (o) an employee of a municipal or county government
24 who is working under a work period not exceeding 40 hours in
25 a 7-day period established through a collective bargaining

1 agreement when a collective bargaining unit represents the
2 employee or by mutual agreement of the employer and employee
3 where no bargaining unit is recognized. Employment in
4 excess of 40 hours in a 7-day, 40-hour work period must be
5 compensated at a rate of not less than 1 1/2 times the
6 hourly wage rate for the employee.

7 (p) an employee of a hospital or other
8 establishment primarily engaged in the care of the sick,
9 disabled, aged, or mentally ill or defective who is working
10 under a work period not exceeding 80 hours in a 14-day
11 period established through either a collective bargaining
12 agreement when a collective bargaining unit represents the
13 employee or by mutual agreement of the employer and employee
14 where no bargaining unit is recognized. Employment in
15 excess of 8 hours per day or 80 hours in a 14-day period
16 must be compensated for at a rate of not less than 1 1/2
17 times the hourly wage rate for the employee.

18 (q) a firefighter who is working under a work
19 period established in a collective bargaining agreement
20 entered into between a public employer and a firefighters'
21 organization or its exclusive representative;

22 (r) an officer or other employee of a police
23 department in a city of the first or second class who is
24 working under a work period established by the chief of
25 police under 7-32-4118;

1 ~~(r)~~(s) an employee of a department of public safety
2 working under a work period established pursuant to
3 7-32-115."

4 NEW SECTION. Section 2. Extension of authority. Any
5 existing authority of the commissioner of labor and industry
6 to make rules on the subject of the provisions of this act
7 is extended to the provisions of this act.

-End-

APPROVED BY COMM. ON BUSINESS & INDUSTRY

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Senate BILL NO. *237*
Bryan McCallum Trent

INTRODUCED BY
A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING RADIO AND TELEVISION STATION ADVERTISING SALESMEN FROM THE OVERTIME COMPENSATION PROVISIONS OF THE STATE WAGE LAWS; AND AMENDING SECTION 39-3-406, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
Section 1. Section 39-3-406, MCA, is amended to read:
"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:
(a) students participating in a distributive education program established under the auspices of an accredited educational agency;
(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;
(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;
(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;
(e) any persons not regular employees thereof who

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voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;
(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;
(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;
(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;
(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;
(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;
(k) any individual employed by the United States of America.
(2) The provisions of 39-3-405 do not apply to:
(a) an employee with respect to whom the United States



1 Secretary of Transportation has power to establish
2 qualifications and maximum hours of service pursuant to the
3 provisions of 49 U.S.C. 304;

4 (b) an employee of an employer subject to the
5 provisions of part I of the Interstate Commerce Act;

6 (c) an individual employed as an outside buyer of
7 poultry, eggs, cream, or milk, in their raw or natural
8 state;

9 (d) a salesman, partsman, or mechanic paid on a
10 commission or contract basis and primarily engaged in
11 selling or servicing automobiles, trucks, mobile homes,
12 recreational vehicles, or farm implements if he is employed
13 by a nonmanufacturing establishment primarily engaged in the
14 business of selling such vehicles or implements to ultimate
15 purchasers;

16 (e) a salesman primarily engaged in selling trailers,
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18 establishment primarily engaged in the business of selling
19 trailers, boats, or aircraft to ultimate purchasers;

20 (f) a salesman paid on a commission or contract basis
21 who is primarily engaged in selling advertising for a radio
22 or television station employer;

23 {f}{g} an employee employed as a driver or driver's
24 helper making local deliveries who is compensated for such
25 employment on the basis of trip rates, or other delivery

1 payment plan, if the commissioner finds that such plan has
2 the general purpose and effect of reducing hours worked by
3 such employees to or below the maximum workweek applicable
4 to them under 39-3-405;

5 {g}{h} an employee employed in agriculture or in
6 connection with the operation or maintenance of ditches,
7 canals, reservoirs, or waterways not owned or operated for
8 profit and not operated on a sharecrop basis and which are
9 used exclusively for supply and storing of water for
10 agricultural purposes;

11 {h}{i} an employee with respect to his employment in
12 agriculture by a farmer, notwithstanding other employment of
13 such employee in connection with livestock auction
14 operations in which such farmer is engaged as an adjunct to
15 the raising of livestock, either on his own account or in
16 conjunction with other farmers, if such employee is:

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18 agriculture by such farmer; and

19 (ii) paid for his employment in connection with such
20 livestock auction operations at a wage rate not less than
21 that prescribed by 39-3-404;

22 {i}{j} an employee of an establishment commonly
23 recognized as a country elevator, including an establishment
24 which sells products and services used in the operation of a
25 farm, if no more than five employees are employed by the

1 establishment;

2 (j)(k) a driver employed by an employer engaged in the
3 business of operating taxicabs;

4 (k)(l) an employee who is employed with his spouse by
5 a nonprofit educational institution to serve as the parents
6 of children who are orphans or one of whose natural parents
7 is deceased or who are enrolled in such institution and
8 reside in residential facilities of the institution so long
9 as the children are in residence at the institution and so
10 long as such employee and his spouse reside in such
11 facilities and receive, without cost, board and lodging from
12 the institution and are together compensated, on a cash
13 basis, at an annual rate of not less than \$10,000;

14 (l)(m) an employee employed in planting or tending
15 trees; cruising, surveying, or felling timber; or
16 transporting logs or other forestry products to a mill,
17 processing plant, railroad, or other transportation terminal
18 if the number of employees employed by his employer in such
19 forestry or lumbering operations does not exceed eight;

20 (m)(n) an employee of a sheriff's department who is
21 working under an established work period in lieu of a
22 workweek pursuant to 7-4-2509(1);

23 (n)(o) an employee of a municipal or county government
24 who is working under a work period not exceeding 40 hours in
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1 agreement when a collective bargaining unit represents the
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6 hourly wage rate for the employee.

7 (o)(p) an employee of a hospital or other
8 establishment primarily engaged in the care of the sick,
9 disabled, aged, or mentally ill or defective who is working
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18 (p)(q) a firefighter who is working under a work
19 period established in a collective bargaining agreement
20 entered into between a public employer and a firefighters'
21 organization or its exclusive representative;

22 (q)(r) an officer or other employee of a police
23 department in a city of the first or second class who is
24 working under a work period established by the chief of
25 police under 7-32-4118;

1 ~~(r)~~(s) an employee of a department of public safety
2 working under a work period established pursuant to
3 7-32-115."

4 NEW SECTION. Section 2. Extension of authority. Any
5 existing authority of the commissioner of labor and industry
6 to make rules on the subject of the provisions of this act
7 is extended to the provisions of this act.

-End-

1 *Senate* BILL NO. *237*
2 INTRODUCED BY *Byron McBathum Trust*

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20 household to care for children dependent upon the head of
21 the household;

22 (d) immediate members of the family of an employer or
23 persons dependent upon an employer for half or more of their
24 support in the customary sense of being a dependent;

25 (e) any persons not regular employees thereof who

1 voluntarily offer their services to a nonprofit organization
2 on a fully or partially reimbursed basis;

3 (f) handicapped workers engaged in work which is
4 incidental to training or evaluation programs or whose
5 earning capacity is so severely impaired that they are
6 unable to engage in competitive employment;

7 (g) apprentices or learners, who may be exempted by
8 the commissioner for a period not to exceed 30 days of their
9 employment;

10 (h) learners under the age of 18 who are employed as
11 farm workers, provided that such exclusion shall not exceed
12 a period of 180 days from their initial date of employment
13 and further provided that during this exclusion period wages
14 paid such learners may not be less than 50% of the minimum
15 wage rate established in this part;

16 (i) retired or semiretired persons performing
17 part-time incidental work as a condition of their residence
18 on a farm or ranch;

19 (j) any individual employed in a bona fide executive,
20 administrative, or professional capacity as these terms are
21 defined and delimited by regulations of the commissioner;

22 (k) any individual employed by the United States of
23 America.

24 (2) The provisions of 39-3-405 do not apply to:
25 (a) an employee with respect to whom the United States

1 Secretary of Transportation has power to establish
2 qualifications and maximum hours of service pursuant to the
3 provisions of 49 U.S.C. 304;

4 (b) an employee of an employer subject to the
5 provisions of part I of the Interstate Commerce Act;

6 (c) an individual employed as an outside buyer of
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1 ††)§] an employee of a department of public safety
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